UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID MCCULLOUGH,

Plaintiff,

v. 7:15-CV-0638 (DNH/TWD)

SYRACUSE POLICE DEPARTMENT,

Defendant.

APPEARANCES: OF COUNSEL:

DAVID MCULLOUGH, 95-B-2598
Plaintiff pro se
Riverview Correctional Facility
P.O. Box 247
Ogdensburg, New York 13669

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

ORDER and REPORT-RECOMMENDATION

The Clerk has sent this pro se complaint together with an application to proceed *in forma pauperis* to the Court for review. (Dkt. Nos. 1 and 2.) For the reasons discussed below, I grant Plaintiff's *in forma pauperis* application (Dkt. No. 2) and recommend that the action be dismissed without leave to amend.

I. ALLEGATIONS OF THE COMPLAINT

Plaintiff alleges that his truck and work tools were stolen from his sister's residence, where they were being stored while he was incarcerated. (Dkt. No. 1 at 4.) Plaintiff's sister reported the vehicle stolen, but "the Syracuse police informed her that she was not the owner." *Id.* Plaintiff wrote two letters to the Syracuse Police Department requesting an investigation into

the theft. *Id.* The police department did not respond. *Id.* Plaintiff's sister later learned that the truck had been illegally sold to a scrap yard. *Id.*

In this action, Plaintiff sues the Syracuse Police Department for failing to investigate the theft, failing to enforce the law regarding the illegal sale of Plaintiff's truck to a scrap yard, and failing to file a police report regarding the theft. (Dkt. No. 1 at 6.) Plaintiff requests $5000 in compensatory damages and $10,000 in punitive damages. *Id.* at 7.

II. PLAINTIFF'S APPLICATION TO PROCEED *IN FORMA PAUPERIS*

Plaintiff has applied to proceed *in forma pauperis*. (Dkt. No. 2.) A court may grant *in forma pauperis* status if a party "is unable to pay" the standard fee for commencing an action. 28 U.S.C. § 1915(a)(1) (2006). After reviewing Plaintiff's *in forma pauperis* application (Dkt. No. 2), I find that Plaintiff meets this standard. Therefore, Plaintiff's application to proceed *in forma pauperis* is granted.[1]

III. LEGAL STANDARD FOR INITIAL REVIEW OF COMPLAINT

28 U.S.C. § 1915(e) (2006) directs that when a person proceeds *in forma pauperis*, "the court shall dismiss the case at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2).

In order to state a claim upon which relief can be granted, a complaint must contain, *inter alia*, "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The requirement that a plaintiff "show" that he or she is entitled to relief

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[1] Plaintiff should note that although the application to proceed *in forma pauperis* has been granted, Plaintiff will still be required to pay fees that he may incur in this action, including copying and/or witness fees.

means that a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is *plausible* on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Determining whether a complaint states a plausible claim for relief . . . requires the . . . court to draw on its judicial experience and common sense. . . . [W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged--but it has not shown--that the pleader is entitled to relief." *Id.* at 679 (internal citation and punctuation omitted).

"In reviewing a complaint . . . the court must accept the material facts alleged in the complaint as true and construe all reasonable inferences in the plaintiff's favor." *Hernandez v. Coughlin*, 18 F.3d 133, 136 (2d Cir. 1994) (citation omitted). Courts are "obligated to construe a pro se complaint liberally." *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

When screening a complaint, the court has the duty to show liberality towards pro se litigants. *Nance v. Kelly*, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam). "[E]xtreme caution should be exercised in ordering sua sponte dismissal of a pro se complaint before the adverse party has been served and [the] parties . . . have had an opportunity to respond." *Anderson v. Coughlin*, 700 F.2d 37, 41 (2d Cir. 1983).

IV. ANALYSIS

Plaintiff sues the Syracuse Police Department under 42 U.S.C. § 1983 for failing to

investigate the theft of his truck and tools, failing to enforce the law regarding the illegal sale of Plaintiff's truck to a scrap yard, and failing to file a police report regarding the theft. (Dkt. No. 1 at 1, 6.) Such an allegation fails to state a federal civil rights claim as a matter of law. *Harrington v. Cnty. of Suffolk*, 607 F.3d 31, 35 (2d Cir. 2010) (holding that parents had no constitutional due process property interest in adequate police investigation of motor vehicle collision that killed their son); *Gomez v. Whitney*, 757 F.2d 1005 (9th Cir. 1985) (a claim against a police department for failure to investigate is insufficient to state a civil rights claim unless another constitutional right is implicated); *Naples v. Stefanelli*, 972 F. Supp. 2d 373, 388 (E.D.N.Y. 2013) (crime victims "do not have a constitutionally protected right to a government investigation of alleged wrongdoing"); *Jordan v. Fischer*, 773 F. Supp. 2d 255, 278 (N.D.N.Y. 2011) (citing *Gomez*); *Lewis v. Gallivan*, 315 F. Supp. 2d 313, 316 (W.D.N.Y. 2004) ("[T]he law is well settled that no private citizen has a constitutional right to bring a criminal complaint against another individual."). Therefore, I recommend that the Court dismiss the complaint.

Where a pro se complaint fails to state a cause of action, the court generally "should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (internal quotation and citation omitted). However, an opportunity to amend is not required where "the problem with [the plaintiff's] causes of action is substantive" such that "better pleading will not cure it." *Id.* Here, the problem with Plaintiff's claim is substantive and could not be cured by better pleading because there is simply no constitutional right to have the police investigate a crime. Therefore, I recommend that the Court dismiss the action without leave to amend.

WHEREFORE, it is hereby

ORDERED that the application to proceed *in forma pauperis* (Dkt. No. 2) is **GRANTED**; and it is further

RECOMMENDED that the complaint (Dkt. No. 1) be dismissed without leave to amend; and it is further

ORDERED that the Clerk serve a copy of this Order and Report-Recommendation on Plaintiff.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW**. *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993) (citing *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1) (Supp. 2013); Fed. R. Civ. P. 72, 6(a).

Dated: June 5, 2015
Syracuse, New York

Therèse Wiley Dancks
United States Magistrate Judge